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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,823	02/20/2002	Dennis Colditz	24-NS-120748	7483

23465 7590 10/27/2003

JOHN S. BEULICK  
C/O ARMSTRONG TEASDALE, LLP  
ONE METROPOLITAN SQUARE  
SUITE 2600  
ST LOUIS, MO 63102-2740

EXAMINER

PALABRICA, RICARDO J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/683,823

Applicant(s)

COLDITZ ET AL.

Examiner

Rick Palabrica

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 4-13, 16-24 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 19, 20, 22, 29, 30, 32 and 34-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, 11-13, 16-18, 21, 23, 24, 27, 28, 31 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. Applicant's Request for Continued Examination in Paper No. 14 and Amendment After Final Office Action in Paper No. 12 are acknowledged. The amendment directly revises claims 1 and 24 by further limiting the servicing platform as having "a floor attached to a top of a frame." The amendment is in response to the 5/27/03 Office Action. The examiner agrees that the amended claims define over the applied art in said Office Action.

2. The applicant also traversed in Paper No. 12 the restriction of newly added claims 34-41. Applicant's arguments have been fully considered but found non-persuasive for the same reasons given in section 2 of the said Office Action. The restriction requirement is still deemed proper and is therefore made **FINAL**.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-8, 11-13, 16-18, 21, 23, 24, 27, 28, 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Meuschke et al. (U.S. 4,200,172), who discloses a radiation shielded movable work station apparatus for use in a steam generator of a nuclear power plant (see Figs. 2-7).

Art Unit: 3641

Applicant's claim language reads on Meuschke et al.'s movable work station as follows: a) "frame comprising a plurality of interconnected beams" reads on the plurality of mounting bracket assemblies 86 that are interconnected to each other through support ring 85; b) "floor attached to and covering said frame" reads on support ring 85 (note that this ring has a circular access opening at its center); c) "support structure attached to said frame" reads on I-beam columns 83 that are attached to mounting assemblies 86 through the support ring 85; d) "auxiliary platform" reads on work station 40 (note that a work station extends through the access opening of the floor, and that it is movable along a perimeter of said floor opening by way of wheel 52 (see in particular Fig. 4 and column 4, lines 38+)); e) "safety rail around a perimeter of the access opening" reads on cage assembly 50 (note in Fig. 2 that this cage assembly extends above the floor and floor aperture); f) "safety rail around the outer perimeter of the floor" reads on the enclosure surrounding the apparatus (see envelope around element 83 in Fig. 2).

As to the limitations in claim 13, the claim language reads on Meuschke et al.'s invention as follows: a) "primary containment vessel" reads on the containment of the nuclear reactor where the work station apparatus is used; b) "reactor pressure vessel" reads on the steam generator where the work station apparatus is used (note that a steam generator is inherently designed to work under pressure, i.e. it is a pressure vessel used in a nuclear reactor system; also, the applicant has not specified or defined the operating or design parameters of the claimed pressure vessel; c) "reactor servicing platform" reads on the work station apparatus.

Art Unit: 3641

The claims are to an apparatus but they contain statements that are essentially statements of intended or desired use. For example, the statement in claim 1 starting with "for a nuclear reactor" and ending with "refueling floor". This and other statements of intended use do not serve to patently distinguish the claimed structure over that of the reference, as long as the structure of the cited references is capable of performing the intended use. See MPEP 2111-2115.

See also MPEP 2114 that states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531.

[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

As to the term "reactor servicing platform" in the claim 1, this term has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Art Unit: 3641

The structure in the cited reference is capable of being used in the same manner and for the intended or desired use as the claimed invention.

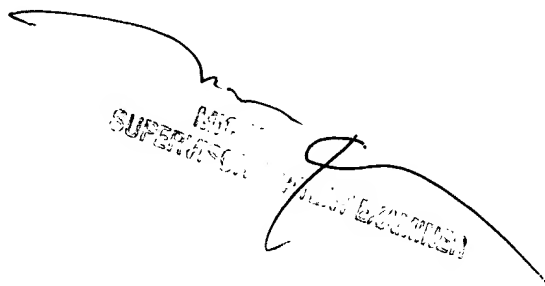
### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 703-306-5756. The examiner can normally be reached on 7:00-4:30, Mon-Fri; 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

RJP  
October 10 2003

A handwritten signature in black ink is written over a rectangular stamp. The stamp contains the text "SUPERVISOR" and "MICHAEL CARONE" in a bold, sans-serif font. The signature is a stylized, cursive-like name that appears to be "RJP".